

SERVICE DATE—JANUARY 15, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 370X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN CLERMONT, BROWN, AND ADAMS COUNTIES, OHIO

Digest:¹ This decision allows Norfolk Southern Railway Company to discontinue its freight rail service over approximately 40.7 miles of rail line in Clermont, Brown, and Adams Counties, Ohio, subject to standard employee protective conditions.

Decided: January 14, 2015

By petition filed on September 30, 2014, Norfolk Southern Railway Company (NSR) seeks an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10903 to discontinue service over an approximately 40.7-mile rail line, extending from milepost CT 32.83 at Williamsburg, Ohio, to milepost CT 73.50 at Plum Run, in Clermont, Brown, and Adams Counties, Ohio (the Line). Notice of the exemption was served and published in the Federal Register on October 20, 2014 (79 Fed. Reg. 62,708).

No comments concerning the proposed discontinuance were filed. We are granting the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

Originally part of the Norfolk and Western Railway system, the 40.7-mile rail line is part of an NSR branch that extends between Cincinnati and Portsmouth, Ohio. The Line is located in the middle of the Cincinnati-Portsmouth line between Williamsburg and Plum Run. According to NSR, the Line includes the following stations that would be discontinued if the exemption is granted: Eastwood, Mt. Oreb, Sardinia, Mowrystown, Macon, Winchester, Seaman, Lawshe, Peebles, and Plum Run. NSR notes that there is a station on the Line at Williamsburg, but that station would not be discontinued. NSR states that this is because NSR's Clare (Cincinnati) – Williamsburg segment immediately to the west of and contiguous with the Line is currently

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

operated by CCET, LLC, a Class III carrier.² Additionally, NSR asserts that the eastern segment of the Cincinnati-Portsmouth line, extending between Plum Run and Vera (Portsmouth), has been out of service since 2008 and will be the subject of a separate discontinuance proceeding.

NSR argues that the Line is a burden on it and interstate commerce because the potential annual revenue that the Line's one remaining shipper could generate would be heavily outweighed by the costs of maintaining and operating the Line. NSR claims a base year normalized maintenance cost of \$364,119 (\$8,953 per track mile) and projects a forecast year normalized maintenance cost of \$374,358 (\$9,205 per track mile), which were based upon actual track maintenance costs and data. NSR states that the Line experienced a base year avoidable loss from rail operations of \$325,254, and it projects a forecast year avoidable loss from rail operations of \$332,491.³

Further, NSR contends that the Line is no longer in operable condition and would require a significant investment to rehabilitate. NSR states that on April 27, 2014, service over the Line was suspended due to deteriorating track conditions, and as of May 13, 2014, the Line has been formally embargoed. NSR argues that returning the Line to Federal Railroad Administration (FRA) Class I track safety standards would require an upfront expenditure of \$5,588,058. NSR also contends that continuing to operate the Line would require additional "program maintenance," including maintenance on eight bridges over the next 10 years, beginning in 2015, at a total cost of \$1,230,000. NSR states that the necessary rehabilitation costs cannot be recouped because the Line cannot be operated profitably.

NSR states that it handled 113 carloads over the Line in the 12 months ending in March 2014 (prior to the embargo). NSR adds that 112 of these carloads consisted of shelled corn, while the remaining car was empty.⁴ According to NSR, the Line has served one customer since 2012, Winchester Ag Service Company (Winchester Ag), and the Line had served an additional customer, J McCoy Lumber Co. LTD (J McCoy Lumber), prior to 2012.⁵ NSR states that it has reason to believe both Winchester Ag and J McCoy Lumber regularly make use of trucks for

² CCET, LLC—Lease & Operation Exemption—Rail Line of Norfolk S. Ry., FD 35810 (STB served Apr. 4, 2014).

³ The Board notes that the net liquidation value listed in Exhibit D, Appendix 1 at line 12(c) is not consistent with the Estimated Net Liquidation Value listed in Exhibit D, Appendix 4. This impacts the forecast year loss and estimated subsidy totals listed in Exhibit D, Appendix 1 at lines 18 and 19. However, this does not impact the Board's overall analysis in this matter, as correcting these figures would not make the Line a profitable operation.

⁴ NSR Pet. at 8; see also NSR Pet., Ex. D. But see NSR Pet. at 5, which states, inconsistently, that all 113 carloads were shelled corn.

⁵ NSR certifies that it has served a copy of its discontinuance petition for exemption on these two shippers.

shipping their products and have competitive trucking options available to them via Ohio's highway system. Finally, NSR states that there is no overhead traffic on the Line and that the low levels of on-line traffic make it unattractive to a potential short line operator.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of NSR's proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. The Line's remaining and recent shippers have neither opposed the proposed discontinuance nor indicated that they would be adversely affected by it. An exemption would minimize the administrative expense of the application process, expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of proceedings. 49 U.S.C. §§ 10101(2), (7), and (15). An exemption would also foster sound economic conditions in transportation and encourage honest and efficient management of railroads by more quickly permitting NSR to formally discontinue operations on a line that needs significant rehabilitation and can only be operated at a substantial loss. 49 U.S.C. §§ 10101(5) and (9). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

We also find that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power.⁶ As noted, no shippers filed comments regarding the discontinuance, and the record indicates that viable transportation alternatives are available. Nevertheless, to ensure that the remaining and recent shippers are informed of this proceeding and of our action here, we will direct NSR to serve a copy of this decision on Winchester Ag and J McCoy Lumber so that they receive it within five days of the service date of this decision, and to certify to the Board contemporaneously that it has done so.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose upon NSR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

⁶ Because we find that regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed discontinuance is limited in scope.

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the Line for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. However, the OFA provisions under 49 U.S.C. § 10904 for a subsidy to provide continued rail service do apply to discontinuances. Environmental reporting requirements under 49 C.F.R. § 1105.7 and historic reporting requirements under 49 C.F.R. § 1105.8 do not apply. See 49 C.F.R. §§ 1105.6(c) and 1105.8(b).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service by NSR of its operations over the above described line, subject to the employee protective conditions set forth in Oregon Short Line Railroad–Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).
2. NSR is directed to serve a copy of this decision on the Line’s existing and recent shippers so that they receive it within five days after the service date of this decision and to certify contemporaneously to the Board that it has done so.
3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by NSR and the Board by January 26, 2015, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,600. See 49 C.F.R. § 1002.2(f)(25).
4. OFAs for subsidy and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: “**Office of Proceedings, AB-OFA.**”
5. Petitions to stay must be filed by January 30, 2015. Petitions to reopen must be filed by February 9, 2015.
6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on February 14, 2015.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.